

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6321 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RATHOD GOPALJI LAXMANJI

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/11/1999

ORAL JUDGEMENT

The petitioner came to be detained by an order dated 18.2.99 passed by the District Magistrate, Mahesana in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-social activities Act, 1985 (PASA for short).

2. In the ground of detention, the Detaining Authority recorded that four offences under Prohibition Act are registered against the petitioner. The Authority also considered the statements of 3 witnesses involving

the petitioner into boot legging and other activities resulting into disruption of public order. The Authority recorded a subjective satisfaction about the necessity for exercise of powers under section 9(2) of the PASA Act. The Authority also observed that no other remedy can be resorted to for preventing the petitioner from pursuing his boot legging and anti-social activities and passed the order of detention.

3. The petitioner has approached this Court with a petition under Article 226 of the Constitution of India on various grounds, one of them being that the Detaining Authority has not considered the possibility of resorting to a less drastic remedy by resorting to Section 437(5) of the Code of Criminal Procedure of getting the bail cancelled. The order, therefore, suffers from vice of non-application of mind and would therefore be vitiated.

4. Mr.Dave, Ld. Advocate appearing for the petitioner has pressed in service only the above ground and urged that on this count alone, the petition may be allowed and the order in question may be quashed and set aside.

5. Mr.Joshi, Ld. AGP submitted that the authority has considered all the aspects and non-consideration of this aspect has not caused any prejudice to the petitioner and the petition therefore may be dismissed.

6. Considering the rival contentions, the petition deserves to be allowed only on the ground advanced and relied upon by the Learned Advocate for the petitioner.

7. If the rival side contentions are considered in light of the detention order and the ground of detention produced on record, it is clear that the detaining authority has not taken into consideration the available less drastic remedy in the nature of getting the bail of the petitioner cancelled. The Authority could have considered this aspect of resorting to that remedy before coming to a subjective satisfaction that detention under PASA was the only available remedy. This reflects clear non-application of mind by the Detaining Authority. The order therefore would be vitiated. In this regard, a decision of the Division Bench of this Court in LPA 1056 of 1999 in SCA 8650 of 1997 in the case of Yunusbhai Husanbhai Ghanchi Vs. District Magistrate dated 15th September, 1999 may profitably be used. In that case, the Court took a view that non-consideration of aspect of cancellation of bail can be termed non-application of

mind and that it would vitiate the order of detention. In this view of the matter, the petition deserves to be allowed. The order impugned deserves to be quashed and set aside.

8. The petition is therefore allowed. The order of detention passed by District Magistrate, Mahesana, on 18.2.1999 in respect of petitioner Rathod Gopalji Laxmanji is hereby quashed and set aside. The petitioner be set at liberty forthwith if not required in any other case. Rule made absolute accordingly. No Costs.

(A.L.Dave, J)

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